

# COMMUNITY

JOURNAL

## The RN contract trap

YOUR IMMIGRATION SOLUTION



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(Part 2 of 2)

THIS is the second of a two part article on RNs who immigrate to the US and find themselves the subject of penalizing employment contracts. In the previous article we discussed the RNs immigrating to the US with a hope and promise of a good job and a green card. But, sadly, upon arriving, they experience an entirely different picture than what was represented to them when recruited overseas. For many, the working conditions are not as promised. They were told that they would be working at a specific hospital in a safe environment, only to find out that the position is in a different hospital, in unsafe neighborhoods, or even in completely different cities and states than promised. Others find that the "agency" or employer has no work for them. They wait several weeks or even several months without receiving a pay check or full time work hours. Many others find that the wages they are receiving are lower than the actual wage they were told they would receive when recruited. Others become virtual prisoners because they are told that they cannot leave their homes because they are on call 24/7 and will need to report to work at a moment's notice. No set schedules force them to stay home, by the phone, waiting for the call to come into work. If the RN does not show up for work, she can be found in breach of contract.

These experiences are more typical of nurses recruited by staffing companies or nursing agencies. The staffing company may have had a contract with the hospital promised, but lost it prior to the RN's arrival to the US. The staffing company then must try and find new clients to

place its RNs. RNs who find themselves in these predicaments can only tolerate this for a limited period of time. They are in a strange country with no friends or family and do not know what to do or what their rights are. They must borrow from friends, or life savings to survive. They have limited access to the outside world. Eventually they can tolerate no more and forge out on their own to look for more stable jobs and better living conditions.

This is when the employer's harassment campaign may begin. The employer may even sue the RN for breach of contract and damages in the tens of thousands of dollars. The contract usually sets a state other than where the RN is living or working as the forum for disputes. The RN does not appear in court to defend her actions and the employer receives a default judgment. The employer then uses the judgment to garnish the wages of the RN who is very easy to track. Typically, an attorney in the city the RN is residing in is hired by the employer to obtain a local order to enforce the out of state judgment. The employer may also notify the Immigration Service that the RN has left employment and has not honored her requirement to work for the employer. Many employers also file, or threaten to file complaints, with the nursing board that the RN is a threat to her patients and that her license should be revoked. This can lead to revocations of licenses.

Any of these actions, if left unchecked carry very serious consequences. The RN's credit rating can be ruined as a result of the judgment. Wages at new employers can be garnished which leaves an unpleasant taste in the new employer's mouth. Segregating a portion of wages is an additional administrative burden most employers do not want to handle. Many RNs, after a few years of savings, try to buy

homes and cannot because their credit has been ruined by the judgment.

Perhaps the harshest consequence is for those RNs who have their green cards stripped and find themselves in deportation proceedings by the Immigration Service. This is done because the RN was given a green card to work permanently for the employer. The Immigration Service interprets a resignation within a few months of immigrating to the US as proof of the RN never intended to work permanently for her employer. She therefore was not eligible for the green card to begin with and it must be revoked.

It is therefore of the utmost importance that RNs who find themselves in an unbearable situation to nip the employer's action in the bud. The RN should not ignore the employer's legal and immigration threats, but should address them head on at the outset.

Usually, an RN in this situation has her own cause of action against the employer for its breach of contract. The RN can sue for back wages and challenge out of state judgments. While many states find an employer has a right to recover the reasonable costs for replacing an RN, the large dollar amounts are viewed by many courts as prohibited and unconscionable penalties and liquidated damages. Unfounded complaints, or threats of complaints to licensing agencies, can also be grounds for defamation suits against the employer. Many courts may find the contracts one-sided and unconscionable that the entire contract is voided out.

Immediately challenging the employer also creates a record that can be used to prove to the Immigration Service that the RN had every intention of keeping her obligations to work permanently for the employer. The RN can show that her employer breached the contract and promises. Forcing her to remain working for

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